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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street N.W.
Washington, DC 20536

[redacted]

File: SRC 02 212 52848 Office: TEXAS SERVICE CENTER Date: FEB 26 2004

ON RE: Petitioner:
Beneficiary: [redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

[redacted]

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office on appeal. The decision of the director will be withdrawn and the petition remanded for further consideration.

The petitioner is a transportation company that seeks to employ the beneficiary temporarily in the United States as its operations manager. The director determined that the petitioner had not established that the beneficiary had been employed for one continuous year with a qualifying firm abroad within the three years immediately preceding the filing of the petition.

On appeal, counsel states that the director ignored the facts and proof contained in the petitioner's response to the director's request for additional evidence. Counsel further states that this evidence clearly establishes the eligibility of the beneficiary and his continuous employment for more than 12 months by the parent company abroad. Counsel requests that the visa petition be approved.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(A) state:

> *Intracompany Transferee* means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive, or involves specialized knowledge. Periods spent in the United States in lawful status for a branch of the same employer or a parent, affiliate or subsidiary thereof and brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous employment abroad but such periods shall not be counted toward fulfillment of that requirement.

This petition was filed on June 28, 2002. Therefore, the beneficiary must have been employed one continuous year by the employer abroad since June 28, 1999. The record shows that he was employed as an operations manager for Fletes Capital, H.R., C.A. the claimed Venezuelan parent company from January 1999 to October 14, 2000. The director found that the beneficiary was in the United States from June 2, 2000 until August 5, 2000 for a total of six months. The director also determined that the beneficiary reentered the Untied States on October 14, 2000 and was still residing in the United States when the visa petition was filed.

The record shows that the beneficiary was in the United States for the entire period from October 14, 2000 through June 28, 2002, a period of one year, eight months and fourteen days during the three-year qualifying period. However, the record also shows that during his employment period from June 28, 1999 until October 14, 2000, the beneficiary made brief trips to the United States for business or pleasure. Although it is somewhat difficult to read the overlaying, faint, and smudged Venezuelan exit and reentry and stamps, the beneficiary's Republic of Venezuela passport shows the following trips to the United States and returns to Venezuela:

From December 18, 1999 until January 4, 2000 (eighteen days),
From January 20, 2000 until January 25, 2000 (six days), From February 6, 2000 until February 13, 2000 (eight days),
From March 2, 2000 until March 8, 2000, (seven days),
From April 13, 2000 until April 23, 2000 (eleven days),
From June 16, 2000 until June 27, 2000 (twelve days).

The above periods total less than three months and sixteen days. Therefore, it is determined that the petitioner has established beneficiary had been employed for the required minimum of one continuous year during the three year qualifying period by Fletes Capital H.R., C.A., the claimed parent company abroad.

However, inasmuch as it appears that the beneficiary's eligibility for L-1 classification was not considered, this case will be remanded for the director to again review the record for a determination as whether the petitioner has met the eligibility requirements under section 101(a)(15)(L) of the Act to classify the beneficiary as an L-1 intracompany transferee. For example, whether there is an existing qualifying relationship between the U.S. and foreign entity, and whether the beneficiary has been or will be employed in a primarily managerial or executive capacity. The director may request any additional evidence deemed necessary to assist her with her determination. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision of August 16, 2002 is withdrawn. The petition is remanded to the director for further consideration in accordance with the foregoing and entry of a new decision.